



Attorney Docket No. P64053US0

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of Brigitte FALCONNIER

Via Facsimile

703-872-9306

Application No.: 09/423,665

Art Unit: 1761

Filed: November 22, 1999

Examiner: Curtis Edward SHERRER

For: NOVEL CLEAR BEVERAGE OPTIONALLY ALCOHOLIC CONTAINING ANETHOL
AND CLOUDY DILUTED BEVERAGE OBTAINED BY DILUTIONNOTICE OF APPEAL AND
REQUEST FOR REFUND OF ASSOCIATED FEEMail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the instant notice, transmitted by facsimile, Appeal is taken from the rejection of the claims set forth in the Office Action mailed December 2, 2003. The \$330.00 fee for this notice is attached. Should the fee become detached, or if additional fees are due with respect to this notice, please charge Deposit Account No. 06-1358.

The instant notice of appeal is filed without prejudice to Applicant's rights in connection with Applicant's paper filed April 2, 2004, requesting reconsideration of the finality of the Office Action mailed December 2, 2003, and the refusal to enter the after-final amendment, filed December 31, 2001, as requested in the continued prosecution application (CPA) filed February 28, 2002, and requesting, accordingly, a new Office Action reflecting examination of the claims as so amended.

No official action on the aforesaid request for reconsideration has been received. However, Applicant's undersigned representative was informed - during a telephone discussion with Examiner Milton I. Cano on June 2, 2004, confirmed in a paper that the Examiner sent by facsimile on June 2, 2004 - that finality of the Office Action would be withdrawn, but the time period for reply would not be restarted and Applicant must reply within the time period set in the final Office Action, which reply must address the grounds of rejection as set forth in the final Office Action. Neither the

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PAGE 38 * RCVD AT 6/22/2004 7:38:43 PM [Eastern Daylight Time] * SVR:USPTO-EFYZF-1/1 * DMS:4728366 * CSD:202235359 * DURATION (mm:ss):02:48

Refund Ref:
11/26/2004

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Credit Card Refund Total: \$330.00

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In re application of Brigitte FALCONNIER

Application No.: 09/423,665

Art Unit: 1761

Filed: November 22, 1999

Examiner: Curtis Edward SHERRER

For: NOVEL CLEAR BEVERAGE OPTIONALLY ALCOHOLIC CONTAINING ANETHOL
AND CLOUDY DILUTED BEVERAGE OBTAINED BY DILUTION

RENEWED REQUEST FOR REFUND OF FEE FOR NOTICE OF APPEAL

Mail Stop 16
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On June 2, 2004, a request for refund of the \$330 fee paid for notice of appeal was filed, i.e., as part of the notice of appeal, itself, via facsimile. The notice of appeal was filed following the "Final" Office Action mailed December 2, 2003 ("the December 2 Office Action"). A copy of the request for refund, which is self explanatory, is attached hereto, along with a copy of the corresponding PTO "Auto-Reply Facsimile Transmission," confirming its receipt by the PTO.

In further support of the request for refund, attached hereto is a copy of the PTO "Decision on Petition" ("the Decision"), mailed June 2, 2004. In accordance with the Decision, the December 2 Office Action was made *non-final*, as set forth in the Decision (page 2) (*emphasis added*),

because the examiner refused entry of the amendment after final, it was clearly improper to make the Office Action of December 2, 2003 final.

In effect, the Decision made filing of the Notice of Appeal, and payment of the associated fee, *unnecessary*.

Accordingly, being unnecessarily paid, refund of the \$330 fee paid June 2, 2004, for the notice of appeal is in order.

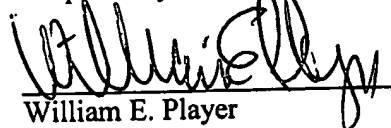
JACOBSON HOLMAN PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
Telephone: (202) 638-6666
Fax: (202) 393-5350
Date: October 7, 2004

WEP/bap

Attachments: (1) Request for Refund, filed 06-02-04, & Auto-Reply Facsimile Transmission
(2) Decision on Petition, mailed 06-02-04

Respectfully submitted

By:


William E. Player
Reg. No. 31,409

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Paper Number _____

In re application of
Falconnier
Serial No. 09/423,665
Filed: November 22, 1999
For: NOVEL CLEAR BEVERAGE OPTIONALLY
ALCOHOLIC CONTAINING ANETHOL AND CLOUDY
DILUTED BEVERAGE OBTAINED BY DILUTION

DECISION ON
PETITION

COPY

This is a response to the reconsideration of the PETITION UNDER 37 C.F.R. §1.181 TO WITHDRAW FINALITY OF THE OFFICE ACTION mailed December 31, 2001.

Applicant received a decision on their request on June 2, 2004, whereby the petition was granted and it was held that the period for response set forth in the December 2, 2003 office action still applied. However the office action of December 2, 2003 did not take into consideration the amendment that was filed December 31, 2001. Applicants filed a request for a Continued Prosecution Application on February 28, 2002. The CPA Transmittal instructed that the amendment filed on December 31, 2001 was to be entered.

DECISION

The instant request has been accepted as a reconsideration of the petition decision of June 2, 2004 under the provisions of 37 CFR 1.181 (no fee).

The amendment filed December 31, 2001 will be entered and the application shall be forwarded to the examiner for a new office action.

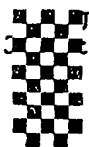
The Petition is GRANTED.

JmStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Jacobson Holman PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004-2201

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USPTO

to reply fax to 2023935350 COMPANY:

6/2/2004 7:41 PM PAGE 1/001 Fax Server

Auto-Reply Facsimile Transmission



TO:

Fax Sender at 2023935350

Fax Information

Date Received:

Total Pages:

6/2/2004 7:38:43 PM [Eastern Daylight Time]

6 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received
Cover
Page

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JACOBSON, HO, VAN

NO. 555 P.

Attorney Docket No. P64053US0

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703-872-9306

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AND CLOUDY DILUTED BEVERAGE OBTAINED BY DILUTION

TRANSMITTAL

Mail Stop AP
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith, by facsimile, are:

- ☒ Notice of Appeal and Request for Refund of Associated Fee
- ☒ Petition for Extension of Time and Request for Partial Refund of Extension Fee
- ☒ Fee payment ☒ Payment Form PTO-2038 (credit card) for \$1280 is attached.
- ☐ Charge \$ * to Deposit Account No. 06-1358.

Fee Calculation					
Excess Claims					
	Nº of Claims	Highest Nº Paid For	Excess Claims	Small Entity Fee	Large Entity Fee
Total	0	0	0	\$9 - \$	\$18 - \$
Ind.	0	0	0	\$43 - \$	\$86 - \$
[] Multiple Dependent Claims (1* Filing)				\$145 -	\$290 - \$
Extension of Time Fee				\$	\$330
Other: Notice of Appeal				\$	\$950
Total Fee Due				\$0	\$1280

- ☒ If a petition for extension of time is necessary, but not enclosed, then this acts as the petition. Charge any fees additionally necessary in connection herewith to Deposit Account No. 06-1358.

JACOBSON HOLMAN PLLC
400 Seventh Street, N. W.
Washington, D.C. 20004-2201
Tel. (202) 638-6666
Fax (202) 393-3350
Date: June 2, 2004

By

William E. Ployer
William E. Ployer
Registration No. 31,409

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PAGE 1/6 * RCVD AT 6/2/2004 7:38:43 PM [Eastern Daylight Time] * SVR:USPTO-EXR-111 * DMS:872906 * CSD:2023935350 * DURATION: 00m-45s-02.08

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Examiner, nor the facsimile confirmation subsequently sent by the Examiner, gave any clear indication whether the after-final amendment (requested in the CPA, as explained above) would be entered pursuant to Applicant's request for reconsideration.

During a subsequent telephone conversation with Examiner Curtis Sherrer on June 2, 2004, Examiner Sherrer informed Applicant's undersigned representative that a Notice of Appeal (or other appropriate after-final paper) would still need to be filed on June 2, 2004, the non-extendable (statutory) deadline for responding to the final Office Action. Although finality of the Office Action would be withdrawn (as explained above), Examiner Sherrer indicated that the withdrawal was not yet *official*, since it had not been mailed.

Accordingly, refund of the \$330 fee for the Notice of Appeal is requested; that is, had the request for reconsideration, filed April 2, 2004, been timely acted on, filing the Notice of Appeal and payment of the \$330 fee would not have been necessary. For the record, Applicant's representatives requested timely action on the request for reconsideration by telephone on or about April 27, 2004, May 27 and 28, 2004, and June 1, 2004.

Respectfully submitted

JACOBSON HOLMAN PLLC

By:

 **COPY**

William E. Player
Reg. No. 31,409

The Jenifer Building
400 Seventh Street, N.W.
Washington, D.C. 20004
Telephone: (202) 638-6666
Fax: (202) 393-5350
Date: June 2, 2004
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